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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Jacqueline Scott Corley, Magistrate Judge

AIU INSURANCE COMPANY,)
)
Plaintiff,)
)
VS.) NO. C 20-07469 JSC
)
McKESSON CORPORATION,)
)
Defendant.)

ACE PROPERTY AND CASUALTY)
INSURANCE COMPANY,)
)
Plaintiff,)
)
VS.) NO. C 20-09356 JSC
)
McKESSON CORPORATION, et al.,)
)
Defendants.)

San Francisco, California
Thursday, August 12, 2021

TRANSCRIPT OF REMOTE ZOOM VIDEO CONFERENCE PROCEEDINGS

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Thursday - August 12, 2021

9:01 a.m.

P R O C E E D I N G S

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THE CLERK: Calling Civil Action C 20-7469, AIU Insurance versus McKesson, and Civil Action C 20-9356, ACE Property versus McKesson.

Counsel, you don't need to state your appearances, but please state your name each and every time before you speak so the reporter knows who's speaking.

Thank you.

THE COURT: All right. Good morning.

We're here on McKesson's motion to stay. Let me sort of tell you how I analyze it, the way I'm looking at it, which is, I think there's agreement that we should stay as to the indemnity action. There's no disagreement there.

And the question -- and we could stay as to the duty to defend. The insurers are happy to do that. But McKesson has filed a motion for summary judgment or partial summary judgment that they want heard on the duty to defend. So they're not seeking to stay that.

So the real issue on this motion is what discovery is relevant to the motion for partial summary judgment because, of course, I can't grant a stay if it would deprive the insurers of discovery to which they're entitled to defend that motion.

So I really see this motion as a discovery dispute more

1 than anything. So then the way to look at it -- and I guess
2 the first sort of dispute is when or what the excess insurers
3 would have to show to defeat the duty to defend.

4 And I think -- well, McKesson seems to contend -- you can
5 tell me, Ms. Hoff Varner, if this is true if you're arguing it,
6 whoever is arguing it -- that it doesn't matter when the
7 duty -- the excess carrier's duty to step up and pay arose
8 because their position is, "What matters is the facts that we
9 were aware of at the time the first policies were exhausted
10 and, therefore, our duty to defend would have kicked in. And
11 we had in our possession certain documents. We want to be able
12 to use those documents potentially to say that we had no duty
13 to defend."

14 And what I understand McKesson to say is, "No, you can't
15 use those because" -- I don't know. So, there you go.

16 **MS. LIQUARD:** Your Honor, this is Cléa Liquard of
17 Covington & Burling for McKesson, and I'm happy to address --

18 **THE COURT:** Great.

19 **MS. LIQUARD:** -- your question.

20 And thank you for teeing it up that way.

21 You're right about the dispute between the parties as to
22 when the extrinsic evidence may become relevant to assessing
23 the duty to defend. I think that debate between the parties,
24 actually, is somewhat academic because, regardless --
25 McKesson's position -- and this is stated throughout the case

1 law. Every case we've seen under California law says that the
2 duty to defend is assessed on a very narrow basis of the
3 complaint, the policy, and potentially undisputed evidence or
4 facts that were known to the insurer at the outset of the
5 underlying lawsuits.

6 Now, insurers contend that the date --

7 **THE COURT:** Well, let me stop you there.

8 There's the rub. At the outset of the underlying lawsuits
9 or, for excess insurers, at the time their duty arose.

10 **MS. LIQUARD:** Correct. And that's insurers' position, and
11 they've stated actually no case law to support that.

12 And my point is really, regardless of which one of those
13 points you accept as the correct sort of date to look at, it
14 doesn't matter for present purposes because all of the
15 materials that insurers are asking for was known to them after
16 both of those dates.

17 They don't dispute that the earliest point in time that
18 they had any of those materials was 2019. That's well after
19 the retention was exhausted in 2018 when McKesson e-mailed
20 insurers and their counsel to say we've hit defense costs of
21 \$25 million, which is five times the amount of the retention.
22 So at least by that point, they were certainly aware that the
23 retention had been more than eroded.

24 **THE COURT:** Okay.

25 **MS. LIQUARD:** The defense obligations were triggered. It

1 was after then that, at the earliest, they had any of this
2 material in their possession.

3 And could I make one more point, Your Honor?

4 **THE COURT:** Sure.

5 **MS. LIQUARD:** You're focusing on the extrinsic evidence
6 and the relevance to the defense analysis, which is absolutely
7 correct.

8 I do want to point out that, as Your Honor stated at the
9 outset, we have a right to have our motion on the duty to
10 defend, our summary judgment motion heard under Rule 56(d).
11 Under that analysis, it's not a relevance analysis; it's
12 whether the non-movant can show for specific reasons that the
13 material they're seeking is essential to opposing the motion
14 for summary judgment. And they haven't met that standard. In
15 fact, it's --

16 **THE COURT:** Well, we're not there yet.

17 **MS. LIQUARD:** -- the opposite.

18 **THE COURT:** We're not there yet. What they did was they
19 preempted that, and probably smartly, because it changes the
20 burden. Right? Because, of course, under 56(d), one thing
21 the Court looks at is: Was the party diligent or did they have
22 an opportunity to pursue that discovery?

23 Here, they're pursuing that discovery. So I think we're
24 not at 56(d). They didn't wait until their opposition was due.
25 They raised it earlier. So I think it's actually more broad

1 than it would be under 56(d).

2 But let me hear who's going to argue for the insurers with
3 respect to the point that you didn't -- all these pleadings and
4 things that you have in your possession, and therefore had
5 knowledge of, you didn't get until after the retention was
6 exhausted.

7 **MR. SHUSTER:** Your Honor, it's Michael Shuster.
8 Thank you.

9 So first, there are different categories of material that
10 we say we should be entitled to use. There is the material
11 that is in our Categories 1 through 3, which is material that
12 McKesson provided to AIU subject to an NDA; and also, to my
13 client, ACE, more limited material was provided subject to a
14 more limited NDA. So that's one category, and then -- broadly
15 speaking.

16 And then there is the deposition exhibits and transcripts
17 that -- in Categories -- what we call Categories 4 and 5, which
18 are from the underlying action which we obtained from the
19 public docket but which are redacted and which --

20 **THE COURT:** Can I just stop you there? Might as well cut
21 ahead.

22 If they're redacted, you're not aware of it; so they
23 cannot form the basis of facts that the insurers were aware of
24 that are undisputed and that demonstrate no potential for
25 coverage. You don't know of them.

1 **MR. SHUSTER:** Well, so I would respond to that in two
2 ways.

3 One, as a threshold matter, there's no reason we shouldn't
4 receive those materials.

5 **THE COURT:** You mean the redacted?

6 **MR. SHUSTER:** I'm sorry?

7 **THE COURT:** You mean the materials that are redacted or
8 the unredacted?

9 **MR. SHUSTER:** In unredacted form. I mean, they argued --

10 **THE COURT:** They're not relevant.

11 **MR. SHUSTER:** Well, Your Honor, the question of what is
12 relevant and what is admissible and what extrinsic evidence is
13 admissible can't be decided now. It has to be decided --

14 **THE COURT:** No. Give me a case that says the insurers can
15 rely on facts of which they had no knowledge at the time.

16 **MR. SHUSTER:** Well, we are -- we are -- we have to have --
17 the question is: When did we have to have the knowledge? When
18 did our obligation arise?

19 **THE COURT:** Yes.

20 **MR. SHUSTER:** Right? And we are excess insurers, and it
21 does matter.

22 And what we're relying upon -- Ms. Liquard says that we're
23 not citing a case. It's the policy language. It's the
24 contract between the parties that says that our obligation
25 kicks in when the retention is exhausted. They didn't provide

1 evidence of that until the day before our first conference in
2 this case in May.

3 We were --

4 **THE COURT:** Okay. But they're accepting that argument,
5 and I'm accepting it.

6 **MR. SHUSTER:** I don't think so.

7 **THE COURT:** Well, I am for purposes of our hearing and,
8 actually, for --

9 **MR. SHUSTER:** Okay.

10 **THE COURT:** -- purposes of this motion.

11 I'm certainly not prepared to rule as a matter of law that
12 the insurer -- the excess insurers are bound by or limited by
13 whatever facts they knew at the time the underlying lawsuits
14 were filed. Okay?

15 I'll accept your argument for purposes of this motion.
16 But I still don't see how, given it's a pretty heavy burden,
17 the facts are -- for extrinsic evidence, that the facts are
18 undisputed, the facts known to the insurer. The information
19 wasn't known to the insurer if it was available on the public
20 docket but redacted.

21 **MR. ST. JEANOS:** Your Honor --

22 If I could, Mr. Shuster. I'm sorry.

23 It's Chris St. Jeanos from AIG.

24 Let me just give you one example of that. And you may be
25 right on Categories 4 and 5. And I think we had a different

1 goal in mind.

2 There's a 30(b)(6) witness of McKesson who testified about
3 the company's knowledge about the occurrence, this single
4 occurrence they say was in existence for 20 years, two decades,
5 and that's at issue in the underlying lawsuits.

6 And I'll get the pages wrong because I don't have them in
7 front of me, but the testimony on page 35, we believe, is --
8 was in our possession at the time we had to make the coverage
9 decision; and it goes directly to their assertion that the
10 affirmative defenses we raised, including prior knowledge,
11 don't work to establish there's no duty to defend.

12 Now, page 36, we don't have because it's been redacted.
13 Page 37, we have.

14 I agree with you, Your Honor, that what we knew and what
15 we relied on in our coverage determination was page 35 and 37.
16 We will present that to you, Your Honor, in opposition to
17 summary judgment. They can argue if they think we shouldn't be
18 allowed to rely on it. You, Your Honor, can decide if it makes
19 any difference even if we rely on it.

20 But it would be helpful to us to see page 36, to make sure
21 we're not presenting something to you that's out of context and
22 that they may not come back and say --

23 **THE COURT:** No. I actually think that'll confuse things.
24 That's going to muck things up, because the question is what
25 did the insurers know. And so we need to limit the record to

1 what the insurers know.

2 But I am -- and, Ms. Liquard, I am prepared -- I don't see
3 why -- well, but then that doesn't -- so the insurers, I guess,
4 dispute -- and I don't think I can resolve it here. They
5 dispute whether they had possession, I guess, of these
6 pleadings, Categories 1 through 3, at the time their duty
7 arose.

8 **MS. LIQUARD:** Well, I heard what -- I heard Mr. Shuster
9 argue. And what they've argued in their opposition to the
10 motion to stay is that they weren't in possession of specific
11 defense invoices until a few months ago. But nothing in the
12 policy says that the defense obligation is triggered upon
13 receipt of a defense invoice.

14 I don't think it's credible for insurers to suggest that
15 they weren't fully aware that the retention had been eroded
16 when we told them in August 2018 that five times the amount of
17 the retention had been incurred. This is one of the
18 largest-scale litigations the country has seen. We were
19 many months into an MDL proceeding. And several months later,
20 as insurers point out in their opposition papers, we made a
21 formal demand for defense. So -- and that was all in 2018.
22 And, again, it's not disputed that the earliest any of this
23 material got into the possession of the insurers was 2019.

24 **THE COURT:** No, I understand.

25 **MS. LIQUARD:** So the notion --

1 **THE COURT:** Why --

2 **MS. LIQUARD:** The notion that --

3 **THE COURT:** Why shouldn't I decide all that -- I'll have
4 to decide all that on the motion for partial summary judgment.
5 Right? And I'll have to look at the evidence. And I'll say:
6 Okay, no reasonable trier of fact could find that -- or every
7 reasonable trier of fact -- it's your motion.

8 **MS. LIQUARD:** Right. Right.

9 **THE COURT:** I have to figure that out.

10 I think it's probably going to be -- have to be -- I don't
11 know -- every reasonable trier of fact would have to find that
12 at the latest, their duty arose at X point.

13 **MS. LIQUARD:** Correct.

14 **THE COURT:** And then, boom, I'll cut it off.

15 And then I'll have to look at the record and see what it
16 shows as to whether they possessed those documents at the time.

17 But what I don't understand, for Category 1 to 3, they
18 have them.

19 **MS. LIQUARD:** Mm-hmm.

20 **THE COURT:** There's nothing more McKesson needs to do.

21 I think it would make the record more complete. I'll be
22 able to do something that answers all those questions. They
23 have them.

24 Otherwise, actually, what we're talking about is really
25 dragging it out, because I'm going to have to first address

1 summary judgment just on when the duty arose. You'll get my
2 order. And then we'll go all the way and brief, then, the
3 second part -- right? -- which is, then, what facts did they
4 have and all that kind of stuff. And I don't think you want to
5 do that.

6 So I think the easiest thing is to put it all together,
7 Categories 1 through 3, sign whatever you need to sign to allow
8 them to use it. They have it. That's it. You just need to
9 sign something, as I understand it.

10 Now, 4 and 5 and, therefore --

11 **MS. LIQUARD:** Your Honor, could I just respond to a couple
12 of those points?

13 It's a little bit of a misrepresentation on insurers' part
14 to suggest that it's just a push of a button or we just deem
15 these materials to be produced, because they've asked for not
16 just McKesson documents, but documents that are designated
17 confidential by other parties. McKesson has confidentiality
18 obligations to those parties. We would have to give notice,
19 get permission to have those produced.

20 So although we don't think they're relevant, I take your
21 point, Your Honor, that we'd like to move the duty to defend
22 forward as fast as possible. And so if you're focusing on
23 Categories 1 through 3 and considering expediting the process,
24 we'd ask Your Honor to consider limiting that to documents that
25 McKesson had that are McKesson documents, in which we are

1 ourselves can say we deem to be produced, rather than other,
2 sort of, plaintiffs, you know, designated, you know,
3 confidentiality discovery responses, which we don't see as
4 relevant at all and it would delay things for us to have to get
5 permission to produce those.

6 **THE COURT:** Well, I just don't know what's involved there.
7 I mean --

8 **MR. SHUSTER:** So --

9 **THE COURT:** -- they have them.

10 The insurers have them; so you got permission initially.
11 Right?

12 **MS. LIQUARD:** Oh. Well, the protective order entered in
13 the MDL allows the materials to be shared with insurers for the
14 purposes of that MDL. It doesn't allow those materials to be
15 used that other parties have designated as protected in --
16 you know, by third parties outside of the MDL litigation.

17 **THE COURT:** I understand. But it's McKesson that brought
18 this motion. So part of your argument on the motion to stay
19 is: It's unfair; this is a two-front war.

20 I mean, you started the war, at least here. Right?

21 **MS. LIQUARD:** Well, we didn't start the coverage
22 litigation, of course.

23 **THE COURT:** They're happy to stay it. They're happy to
24 stay it if you want to not deal with the duty to defend. It's
25 completely in -- as I understand it, it's completely in

1 McKesson's hands. So if McKesson decides that dealing with
2 this coverage on the duty to defend and the underlying cases at
3 the same time is too much, we'll stay it.

4 But my understanding is McKesson wants to go forward. So
5 I'm not that sympathetic, what I'm saying, to the argument
6 about the two-front war.

7 I guess what I'm -- I'm just not -- I'm not -- I don't see
8 that that burden is that great. It's just a matter of
9 confirming. That's all. And, again, the -- and it's not a
10 matter of expediting. We'll go -- it's a matter of not
11 delaying, because, otherwise, the only path I see is to split
12 it up and adjudicate, first, the latest -- right? I don't have
13 to decide definitively -- but the latest date in which a
14 reasonable trier of fact could find, I guess, that the duty
15 arose.

16 And then the second step would be, okay, all these facts
17 were disclosed after that date. We're not going to consider
18 those on the motion for the duty to defend.

19 **MR. SHUSTER:** Your Honor, may I address the point
20 Your Honor just made and clarify a couple of things, if I may?

21 **THE COURT:** Yes.

22 **MR. SHUSTER:** Thank you.

23 So a couple things on that.

24 First, on the materials, whether it's the Category 1
25 through 3 materials or the Category 4 and 5 materials, we can,

1 of course, meet and confer on that stuff and try to work
2 through it and see where we are.

3 We have -- we narrowed our requests after the last
4 conference we had, and we attempted to identify the materials
5 we thought we would need. It was originally Categories 1
6 through 6; but 6, the parties are working on consensually. So
7 Category 1 through 5 was a narrowing of what we thought we
8 would need to oppose the motion.

9 We've had -- we received, basically, a blanket rejection
10 on that. We're certainly at least prepared to try to meet and
11 confer and see if -- you know, with guidance from the Court
12 that puts those materials in play, see whether we can work out
13 arrangements.

14 I would also note, in terms of the relevant date and
15 cutoff date, we have the -- the motion that McKesson has made
16 is directed to what it calls three exemplar lawsuits. Leaving
17 aside whether we accept that these are exemplars, it's as to
18 three lawsuits and as to two policies: the 0809 AIU policy
19 and the 201516 ACE policy. The track -- so the three lawsuits
20 are two Track 1 suits that were file in late 2017, Summit and
21 Cuyahoga, and then an action brought by the Oklahoma Attorney
22 General in 2020.

23 We certainly had all the materials, or at least had access
24 to all of these materials as of the time of that. So there
25 will be -- in fact, even within the confines of the motion,

1 there's going to be a couple of wrinkles as to when the dates
2 are; but I think -- and we'll have different arguments about
3 relevance and what extrinsic evidence we had and what extrinsic
4 evidence we can use, although it's our position -- as the Court
5 noted, it's at least our position that we're entitled to use
6 everything and that the relevant date or the so-called cutoff
7 date for what extrinsic evidence we can use is a contested
8 matter and something the Court is going to need complete
9 submissions on.

10 But coming so, with all that said, we have the Category 1
11 through 3 stuff. And then the 4 and 5, we obtained that from
12 the public docket. And it's true; there are redactions. We --
13 you know, I would actually have used a different example than
14 the one my colleague, Mr. St. Jeanos, used, just in that we had
15 that and, even though it's redacted, we made judgments; we drew
16 inferences. It's information that we had. There may have been
17 some blacked-out pages, but I think it's cutting it pretty fine
18 to say, well, you know, you didn't have those pages for the
19 sake --

20 And whether or not we're allowed to use that stuff in
21 opposing the motion, the argument that McKesson has advanced
22 for denying us use of that stuff is prejudice. And there is no
23 prejudice in us obtaining information that the plaintiffs in
24 the underlying action already have.

25 This is not the classic case. McKesson says this is the

1 classic case where the insurers shouldn't be allowed to obtain
2 discovery. Those cases all address scenarios where the
3 coverage action is way out ahead of the underlying action and
4 the concern is that the insurers will be creating a record that
5 the plaintiffs in the underlying action will then seek to
6 obtain and use.

7 We're in the opposite situation here. They've created the
8 record. All we want is to be able to look at the complete
9 record -- and not even the complete record. We've winnowed it
10 down -- and then to see it in unredacted form.

11 So --

12 **THE COURT:** No, I understand. I'm not going to order it
13 because I think the prejudice is to me, quite honestly, in
14 trying to adjudicate this.

15 What the insurers must show is, rely on facts known to it
16 if you're going to rely on extrinsic evidence and if such facts
17 are undisputed and conclusively demonstrate that there was no
18 potential for coverage.

19 So to the extent you're relying on inferences, well, it
20 better be an undisputed and conclusively demonstrated
21 inference.

22 Now --

23 **MR. SHUSTER:** Well --

24 **THE COURT:** -- to the extent, of course, if McKesson then
25 tried to unredact the material to contradict your inference,

1 that would be a different matter. They can't. Right? It's
2 going to remain redacted. But I don't -- it's not relevant.
3 It's just not relevant. You didn't have it in front of you.
4 You can't use it. And I think it'll keep the record clean
5 there. I agree there isn't that same prejudice in terms of the
6 underlying case isn't there, necessarily.

7 But, in any event, I'm not going to order it.

8 But 1 through 3, I'm prepared to order McKesson to do what
9 they need to do to get the permission --

10 **MR. SHUSTER:** And just --

11 **THE COURT:** -- for --

12 **MS. LIQUARD:** Your Honor --

13 **THE COURT:** -- the insurers to use --

14 **MR. SHUSTER:** And just --

15 **THE COURT:** -- the documents in their possession.

16 **MS. LIQUARD:** Your Honor, to --

17 **MR. SHUSTER:** Just to --

18 **MS. LIQUARD:** Mr. Shuster, if I could, please.

19 **MR. SHUSTER:** -- to be clear on one thing --

20 **THE COURT:** Go ahead, Ms. Liquard.

21 **MS. LIQUARD:** Your Honor, we're prepared to move forward
22 on that basis, and we'll do what we need to do to get the
23 confidentiality obligation sorted out.

24 And to move forward, we'd like to set a briefing schedule.
25 The parties have agreed on a deposition of the declarant who

1 supports our motion for summary judgment. That deposition is
2 scheduled for September 14. We think it's -- we're certainly
3 going to be able to provide -- deem the documents produced by
4 that point. And we think it's suitable to set the opposition
5 date to our duty to defend motion for 21 or 30 days following
6 the deposition.

7 **THE COURT:** All right. Mr. Shuster?

8 **MR. SHUSTER:** Well, I -- so I just -- we're talking about
9 a deposition in -- as I understand it, the status of the
10 parties' discussions on the deposition is that it would happen
11 somewhere in around mid-September. And if that's --

12 **MS. LIQUARD:** September 14 is the date that the parties
13 agreed.

14 **MR. SHUSTER:** All right. So if we can have, you know,
15 30 days from then, I think that's -- that's something we can
16 live with.

17 **THE COURT:** Yeah. Okay. All right. I'll issue an order,
18 and I'll tell the parties to submit a stip on the briefing
19 schedule with the insurers' opposition coming approximately
20 30 days after that deposition occurs, assuming, of course, that
21 they get all those documents -- the permissions for
22 Categories 1 through 3 prior to the deposition.

23 **MR. SHUSTER:** And, Your Honor, if I might, just a couple
24 of -- so, two things.

25 One, on the Category 1 through 3 -- and I think this is

1 clear, and I don't think the Court's seeking to make a
2 distinction here -- technically, AIU is in possession of a
3 broader set of the 1 through 3 materials than -- than ACE is;
4 so -- and they're subject to a different NDA. So I just wanted
5 to note that.

6 And, second, we will seek -- we may -- we may wish to
7 cross-move on the duty to defend. So I -- or we may seek
8 permission, given the nature of the briefing, for a sur-reply.
9 So I just want to be up front about that and just note that.
10 So --

11 **THE COURT:** That would probably be a better way of
12 proceeding, with a sur-reply, if you want -- I mean, if the --
13 if the -- yeah, okay. But let's try to get it done so that we
14 have the hearing before the end of the year.

15 **MS. LIQUARD:** Agreed, Your Honor.

16 **THE COURT:** But don't give you guys -- don't make my time
17 too small. Right? So maybe try to have the briefing done by
18 mid-November, if possible, or before Thanksgiving.

19 **MR. SHUSTER:** Okay. We'll do our utmost but --

20 **THE COURT:** If you can. Think about it. Or at least
21 maybe you should have the hearing in January, but no later than
22 that.

23 **MR. SHUSTER:** Okay. I think --

24 **MR. ST. JEANOS:** Your Honor, on that -- this is
25 St. Jeanos -- the only point I'd make is the settlement, the

1 global settlement that's been reached by McKesson and other
2 distributors, I think the date by which they know if it blows
3 up or it gets locked in is maybe January 2nd or 3rd.

4 So to some extent, if McKesson believes, as it's asserted,
5 that there's prejudice to a ruling by you on some of the issues
6 we raised in defense, it could be that a ruling that --
7 regardless of when we have an argument, a ruling after that
8 date could be helpful, just because I think we'll know by then
9 that the vast majority of cases that McKesson faces are, in
10 fact, wrapped up.

11 **THE COURT:** Yeah. I mean, I'll just tell you, it's not
12 the prejudice argu- -- that prejudice argument that sways me,
13 in large part because it's McKesson that's bringing the motion.
14 The question is, are the documents relevant to your opposition
15 or are they not.

16 **MR. ST. JEANOS:** Yep.

17 **THE COURT:** Right? I just think that's the pivotal
18 question.

19 And for the reasons I said, I think information of which
20 the insurers were not in possession of are not relevant, and it
21 would just confuse matters --

22 **MR. ST. JEANOS:** Understood.

23 **THE COURT:** -- to provide them at this time.

24 **MR. ST. JEANOS:** Understood, Your Honor.

25 **THE COURT:** But you have 56(d). I don't know what it's

1 going to look like, the briefing, if there's -- you always have
2 that option.

3 Like your context argument, you have that option. I don't
4 know if the argument is any good or not, but you always have
5 the option to make that argument in context.

6 **MR. ST. JEANOS:** Understood, Your Honor.

7 And two points that I'll leave you with, Your Honor. And
8 I apologize for this, but I don't want to leave them not said.

9 One is, don't forget that one of the exemplars is the
10 Oklahoma AG action. They're seeking coverage, a coverage
11 ruling from you on that. That was filed in 2020.

12 **THE COURT:** Yes.

13 **MR. ST. JEANOS:** So all of -- there's no dispute that we
14 had all of these materials certainly before coverage, potential
15 coverage for that action was triggered.

16 As to National Union, the policy that they've put at
17 issue, the 0809, the duty to defend arises when the underlying
18 retained limit -- slightly different than a retention -- is
19 exhausted. That retained limit is a per occurrence retained
20 limit with no ad- -- no cap to it, and we do disagree with them
21 that this is a single occurrence.

22 **THE COURT:** I understand. That's all what I'm going to
23 be --

24 **MR. ST. JEANOS:** All within the con- --

25 **THE COURT:** Not today. Not today.

1 **MR. ST. JEANOS:** Exactly.

2 **THE COURT:** My mind is blank as to that issue today.

3 **MR. ST. JEANOS:** Excellent.

4 **THE COURT:** Just so you know, it's not going to make
5 any --

6 **MR. ST. JEANOS:** We will do our best --

7 **THE COURT:** -- difference.

8 **MR. ST. JEANOS:** -- to fill it.

9 **THE COURT:** Yeah, it's empty today on to that. All I'm
10 thinking about -- okay.

11 All right. I'm going to issue an order. And if something
12 does arise -- I don't think it will now. Hopefully, this will
13 give some clarity and it can move forward -- just contact
14 Ms. Means. We can set another status by video. But hopefully,
15 it won't; and the next time I'll see you, we'll have a robust
16 hearing with lots of issues for me to needle through.

17 Great.

18 **MR. ST. JEANOS:** Excellent, Your Honor. Thank you very
19 much.

20 **THE COURT:** Thank you.

21 **MS. LIQUARD:** Thank you, Your Honor.

22 **MR. SHUSTER:** Thank you, Your Honor.

23 **THE COURT:** Bye-bye.

24 (Proceedings adjourned at 9:31 a.m.)

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CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.

DATE: Friday, August 13, 2021

Ana Dub

Ana Dub, CSR No. 7445, RDR, RMR, CRR, CCRR, CRG, CCG
Official United States Reporter